

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

DONALD WAGNER and)	
SANDRA WAGNER,)	
)	
Plaintiffs,)	C.A. No.: N15C-03-197 FSS
)	
v.)	
)	JURY TRIAL DEMANDED
CHRISTIANA CARE)	
HEALTH SERVICES, INC.,)	
)	
Defendant.)	

Submitted: September 9, 2015
Decided: October 15, 2015

ORDER

Upon Review of the Affidavit of Merit

On September 9, 2015, Defendant moved to have the court review Plaintiffs' affidavit of merit, *in camera*, to determine whether it complies with 18 *Del. C.* § 6853(a)(1) and (c).¹

In Delaware, a healthcare negligence lawsuit must be filed with an affidavit of merit, signed by an expert, and accompanied by the expert's *curriculum vitae*.² The expert must be licensed to practice medicine as of the affidavit's date and engaged in the same or similar field as the defendant in the three years immediately

¹ 18 *Del. C.* § 6853(d).

² *Id.* § 6853(a)(1).

preceding the alleged negligence.³ The affidavit must state that reasonable grounds exist to believe the defendant was negligent in a way that proximately caused the plaintiff's injury.⁴

The statute's requirements are minimal. Accordingly, an affidavit of merit tracking the statutory language complies with the statute.⁵

Here, Plaintiffs claim bedsores and subsequent injuries as a result of Defendant's alleged negligent nursing care. Accordingly, Plaintiffs' expert is a registered nurse, which complies with § 6853(a)(1).⁶

After *in camera* review, the court finds:

1. An expert signed the affidavit;
2. A current *curriculum vitae* was filed with the affidavit;
3. The expert is a critical care registered nurse;

³ *Id.* § 6853(c).

⁴ *Id.*

⁵ See *Dishmon v. Fucci*, 32 A.3d 338, 342 (Del. 2011) ("In order to satisfy the *prima facie* burden, an Affidavit of Merit must only contain an expert's sworn statement that medical negligence occurred, along with confirmation that he or she is qualified to proffer a medical opinion.").

⁶ See *Green v. St. Francis Hosp., Inc.*, 791 A.2d 731 (Del. 2002) (holding that based on the nurse's experience, she qualified as an expert under 18 *Del. C.* § 6854 where a patient claimed an injury resulting from negligent nursing care); *Dougherty v. Horizon House, Inc.*, C.A. No. 06C-05-250 RRC, 2008 WL 3488532 (Del. Super. June 25, 2008) (holding that an affidavit of merit from a registered nurse complied with 18 *Del. C.* § 6853(a)(1) and (c)).

4. At the time the affidavit was sworn, the expert was a registered nurse who treated patients and/or taught in the same or similar field of medicine as the Defendant within the three years preceding the alleged negligence;
5. The affidavit states, with reasonable medical probability, that there are grounds to believe the applicable standard of care was breached by Defendant;
6. The expert states Defendant's breach proximately caused Plaintiffs' injuries.

Considering the above, the court finds that the affidavit of merit complies with 18 *Del. C.* § 6853(a) and (c) as to Defendant.

IT IS SO ORDERED.

/s/ Fred S. Silverman

Judge

cc: Prothonotary (Civil)
Stephen J. Milewski, Esquire
Gary S. Nitsche, Esquire